Agency 92

Kansas Department of Revenue

Articles

Article 12.—INCOME TAX

92-12-66a. Abatement of final tax liabilities. (a) General. The authority of the secretary to abate all or part of a final tax liability shall be exercised only in cases in which there is serious doubt as to either the collectability of the tax due or the accuracy of the final tax liability and the abatement is in the best interest of the state. This authority shall be exercised to effect the collection of taxes with the least possible loss or cost to the state and with fairness to the taxpayer. The determination of whether to abate all or part of a final tax liability shall be wholly discretionary.

(b) Definitions.

(1) "Assets" means the taxpayer's real and personal property, tangible and intangible.

(2) "Collectability" means the ability of the department of revenue to collect, and the ability of the taxpayer to pay, the tax liability.

(3) "Concealment of assets" means a placement of assets beyond the reach of the department of revenue, or a failure to disclose information relating to assets, that deceives the department with respect to the existence of the assets, whether accomplished by act, misrepresentation, silence, or suppression of the truth.

(4) "Final tax liability" means a tax liability that was established by the department to which the taxpayer has no further direct appeal rights.

(5) "Order denying abatement" means an order issued by the secretary that rejects a petition for abatement and refuses to abate any part of a final tax liability.

(6) "Order of abatement" means an order issued by the secretary that abates all or part of a final tax liability and states the reasons that this action was taken.

(7) "Parties" means either the person who requests an abatement of a final tax liability or the person's authorized representative, and either the secretary of revenue or the secretary's designee.

(8) "Secretary" means the secretary of the department of revenue or the designee of the secretary.

(9) "Serious doubt as to collectability" means the doubt that exists when a reasonable person, viewing the controlling circumstances objectively, would conclude that the likelihood of recovering the tax liability is less than probable.

(10) "Serious doubt as to liability" means the doubt that exists when a reasonable person, viewing the controlling circumstances objectively, would conclude that it is probable that the final tax liability previously established by the department is greater than the actual tax liability imposed by the Kansas tax imposition statutes.

(11) "Tax" means the particular tax owed by the taxpayer and shall include any related interest and penalty.

(c) Factors affecting abatement.

(1) No final tax liability shall be abated on the ground of serious doubt as to liability if the taxpayer's liability for the tax has been established on the merits by a court judgment or decision of the court of tax appeals. No final tax liability shall be abated on the ground of serious doubt as to liability if the taxpayer has filed tax returns, absent a showing of the reporting errors on the returns.

(2) No tax liability shall be abated by the secretary if the taxpayer has acted with intent to defraud or to delay collection of tax. Frivolous petitions and petitions submitted only to delay collection of a tax shall be immediately rejected.

(d) Procedures.

(1) Each petition for abatement shall be captioned "petition for abatement of a final tax liability" and shall be submitted to the secretary. The petition shall be signed by the petitioner and the taxpayer, if available, under the penalties of perjury and shall include the following:

(A) The reasons why all or part of the final tax liability should be abated;

(B) the facts that support the abatement; and

(C) a waiver of the taxpayer's right of confidentiality under the confidentiality provisions of chapter 79 of the Kansas statutes annotated and amendments thereto, conditioned upon the secretary's abatement of all or part of the final tax liability.

(2) If a petition alleges serious doubt as to collectability, the taxpayer shall submit a statement of financial condition that lists assets and liabilities, accompanied by an affidavit signed by the preparer under the penalties of perjury, attesting that the financial statement is true and accurate to the best of the preparer's knowledge.

(3) After a petition has been submitted, the taxpayer shall provide any additional verified documentation that is requested by the secretary. The petitioner or taxpayer may be required by the secretary to appear before the secretary and testify under oath concerning a requested abatement.

(4) A petition for abatement may be withdrawn by the taxpayer at any time before its acceptance. When a petition is denied, the taxpayer shall be notified in writing by the secretary within 30 days of the decision to deny.

(5) An order of abatement that abates all or part of a final tax liability may be issued by the secretary. The order may direct any remaining liability to be paid within 30 days. Each order of abatement shall set forth the reasons that the petition for abatement was granted and all relevant information, including the following:

(A) The names of all parties;

(B) the amount and type of tax, interest, and penalties that were abated;

(C) the amount of tax, penalty, and interest that remain to be paid on the date of the order; and

(D) the amount that has been paid, if any.

(6) The submission of a petition for abatement shall not prevent the collection of any tax.

(e) Effect of an order of abatement. Each order of abatement shall relate to the entire liability of the taxpayer with respect to which the order is made and shall conclusively settle the amount of liability. Once an order of abatement is issued, matters covered by the order shall not be reopened by court action or otherwise, except for one of the following reasons:

(1) Falsification of statements or concealment of assets by the taxpayer;

(2) mutual mistake of a material fact sufficient to cause a contract to be reformed or set aside; or

(3) serious doubt as to collectability arising after an abatement order is issued that is based on serious doubt as to liability.

(f) Effect of waiver of confidentiality. The issuance of an order of abatement for $5,000 or more shall make all reports of the abatement proceeding available for public inspection upon written request, in accordance with K.S.A. 79-3233b, and amendments thereto, and the taxpayer's express waiver of the right to confidentiality under the confidentiality provisions of chapter 79 of the Kansas statutes annotated, and amendments thereto.

(g) Annual report. On or before the last day of September of each year, a summary of each petition of abatement that was granted during the preceding state fiscal year that reduced a final tax liability by $5,000 or more shall be prepared for filing with the secretary of state, the division of post audit of the legislature, and the attorney general. Each summary shall include the following:

(1) The name of the taxpayer;

(2) a summary of the issues and the reasons for the abatement; and

(3) the amount of final tax liability, including penalties and interest, that was abated. (Authorized by K.S.A. 79-3236; implementing K.S.A. 2010 Supp. 79-3233, 79-3233a, and 79-3233b, as amended by 2011 SB 212, sec. 1; effective July 27, 2001; amended Oct. 28, 2011.)

92-12-145. Transfer of tax credits. (a) Any tax credits earned by a not-for-profit contributor not subject to Kansas income, privilege, or premiums tax may be transferred to any taxpayer that is subject to Kansas income, privilege, or premiums tax. These tax credits shall be transferred only one time. The transferee shall claim the tax credit against the transferee's tax liability in the tax year of the transfer.

(b) The transferor and transferee shall execute a written transfer agreement to transfer the tax credit. The agreement shall include the following information:

(1) The name and either the employer identi-

fication number or the social security number of the transferor;

(2) the name and either the employer identification number or the social security number of the transferee;

(3) the date of the transfer;

(4) the date the contribution was made by the transferor;

(5) the amount of tax credit transferred;

(6) the amount that will be received by the transferor for the tax credit transferred; and

(7) any other relevant information that the secretary requires.

(c) Each transfer agreement shall be reviewed by the secretary. If the transfer agreement is approved, a certificate of transfer shall be issued to the transferor and transferee indicating approval of the transfer. If the transfer agreement is denied, written notification of the denial shall be issued to the transferor and transferee. (Authorized by K.S.A. 79-32,113 and K.S.A. 2008 Supp. 79-32,261; implementing K.S.A. 2008 Supp. 79-32,261; effective June 20, 2008; amended May 22, 2009.)

Article 19.—KANSAS RETAILERS' SALES TAX

92-19-3. (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3602, 79-3607, 79-3609; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988; amended June 26, 1998; revoked April 1, 2011.)

92-19-3a. Credit sales, conditional sales, and other sales and service transactions that allow deferred payment. (a) For purposes of this regulation, K.A.R. 92-19-3b, K.A.R. 92-19-3c, and K.A.R. 92-19-55b, the following definitions shall apply:

(1) "Conditional sale" means a sales transaction made pursuant to a written agreement that is treated as a sale of goods for federal income tax purposes in which the buyer gains immediate possession or control of the goods but the seller or a financial institution retains title to or a security interest in the goods to ensure its future receipt of full payment before clear title is transferred to the buyer in possession or control of the goods. Conditional sale contracts include "financing leases."

(2) "Credit charge" means interest, finance, and carrying charges from credit extended on the sale of goods or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the buyer.

(3) "Credit sale" means a sale of goods or services under an agreement that provides for the deferred payment of the purchase price. Credit sales shall include sales made under the following:

(A) An installment contract that transfers title and possession of the goods to the buyer at the time of purchase, but allows payment to be made in periodic installments; and

(B) a revolving credit contract that extends a line of credit to a buyer that allows purchases to be charged against the account and provides for periodic billing that requires payment of part of, and allows for payment of all of, the credit balance owed by the buyer.

(4) "Creditor" means an entity or person to whom money is owed.

(5) "Financial institution" means a bank, savings and loan, credit union, or other finance company licensed under the provisions of the Kansas uniform consumer credit code as specified in K.S.A. 79-3602, and amendments thereto, for isolated or occasional sales.

(6) "Financing lease" means a conditional-sale contract that is denominated a lease, but that is intended to finance a lessee's purchase of goods or its continued possession of goods under a sale-leaseback agreement. A lessor shall be presumed to have entered into a financing lease if the lessor accounts for the lease transaction as a financing agreement for federal income tax purposes. The term "capital lease" shall be considered synonymous with "financing lease."

(7) "Goods" has the same meaning as "tangible personal property," which is specified in K.S.A. 79-3602, and amendments thereto.

(8) "Invoice" means a paper or electronic bill of sale or similar dated document containing an itemized list of goods or services sold to the buyer that specifies the selling price of the goods or services and complies with the requirements of K.S.A. 79-3648 and amendments thereto, when an itemized charge is taxable.

(9) "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order shall be deemed accepted for layaway by the seller when the seller removes

the property from normal inventory or clearly identifies the property as sold to the purchaser.

(10) "Operating lease" has the meaning specified in K.A.R. 92-19-55b.

(11) "Purchase price" has the meaning of "sales or selling price" specified in K.S.A. 79-3602, and amendments thereto.

(12) "Rain check" means that the seller allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock.

(13) "Repossessed goods" means goods sold on credit that a retailer or other creditor reclaims as allowed by law after a buyer or debtor defaults on installment payments.

(14) "Returned goods" means goods that a buyer returns to a retailer upon the parties' cancellation of the original sales contract when the retailer either credits or refunds the full selling price of the goods and associated sales tax to the buyer. Returned goods shall not include goods accepted in trade or barter, goods repossessed or recaptured by legal process, and goods secured pursuant to the consumer's abandonment of the sales contract or other voluntary surrender.

(15) "Sales tax" or "tax" means Kansas retailers' sales tax, Kansas retailers' compensating use tax, and any local retailers' sales or use tax that is levied in addition to the state tax.

(16) "Services" has the meaning specified in K.S.A. 79-3602, and amendments thereto.

(b) Nothing in this regulation, K.A.R. 92-19-3b, K.A.R. 92-19-3c, or K.A.R. 92-19-55b shall be construed as modifying any of the following:

(1) Any requirement of any Kansas certificate-of-title statute or supporting regulation;

(2) any provision of the retailers' sales tax act that allows a retailer to discount the selling price of goods or services based on a trade-in, coupon, or other price reduction that is allowed by a retailer and taken by a buyer on a sale; or

(3) any requirement imposed on creditors or consumers by the Kansas uniform consumer credit code, K.S.A. 16a-1-101 et seq., and amendments thereto.

(c)(1) When a retailer makes credit sales, the retailer may report and pay tax to the department on the total cash and other payments the retailer receives during each reporting period or, if the retailer's books and records are regularly kept on the accrual basis, on the total receipts accrued in its books and records during each reporting period. A retailer that has filed six or more sales tax returns using the same method of accounting that it uses for its federal income tax reporting shall be presumed to have knowingly elected to use that method of accounting for sales tax purposes and to have benefited from its election. Regardless of the reasons for electing to use one method of accounting, a retailer shall continue to use that method of accounting to report its credit and other retail sales unless the director of taxation authorizes the retailer in writing to change its method of accounting for all future sales tax returns or the internal revenue service directs or authorizes the retailer to change its method of accounting for federal income tax purposes.

(2) A retailer shall not be disqualified from reporting sales on a cash-receipts basis because it makes credit sales or has accounts receivable. However, when a retailer that reports credit sales on a cash-receipts basis sells, factors, assigns, or otherwise transfers an installment contract, account receivable, or similar instrument, sales tax shall become due on the total amount of the remaining payments and shall be reported on the return for the period in which the retailer is paid or credited for the contract or receivable.

(3) For the purposes of administering and enforcing the requirements of the Kansas retailers' sales tax act for retailers that report tax based on the total receipts accrued during a reporting period, the date contained on the invoice given to the buyer shall be presumed to be the date the retailer recognizes the receipts in its books and records as earned.

(4) If a retailer finds that it is a hardship to report and remit sales tax in accordance with the requirements in this subsection, the retailer may apply in writing to the director of taxation for permission to start reporting its sales using a different accounting method. The retailer shall fully explain the reasons for the request, and the director may identify reasonable requirements that the retailer shall meet as a condition to allowing the retailer to change the method of accounting it uses to report sales tax.

(d)(1) Each retailer that accounts for its credit sales on the accrual basis shall bill the buyer the full amount of tax that is due on the purchase price of the goods or services sold on credit and shall source and report the sale as if it were a cash sale. The purchase price shall not be reduced by any expense that the retailer attributes to the sale or service and recovers from the buyer even when

the retailer bills the expense as a separate line-item charge or on a separate invoice.

(2) When a credit sale is made, any credit charge that is paid by a buyer in addition to the purchase price of goods or services shall be deemed not to be part of the purchase price and shall not be subject to sales tax if both of the following conditions are met:

(A) The invoice, bill of sale, or similar document given to the buyer separately states the credit charge and the selling price of the goods or services that were sold on credit.

(B) The extension of credit was contracted for by the parties, provided for by standard industry custom or practice, or otherwise granted by the retailer, including by issuing an invoice that unilaterally informs the buyer that interest at a stated rate will be added each month to any outstanding credit balance.

(3) A retailer's charges for the extension of credit that meet the requirements of paragraph (d)(2) shall not be included in the retailer's report of gross receipts.

(4) A retailer that makes credit sales shall maintain records that separately show the selling price of the goods or services, the corresponding amount of sales tax charged, the customer's credit balance, and any interest, financing, or carrying charge that has been added to that balance.

(5) A retailer shall not collect sales tax on charges to customers for insufficient funds checks or closed-account checks. The receipts from these charges shall not be included in the retailers report of gross receipts.

(6) This subsection shall not apply to the types of charges related to credit-card use that are specified in subsection (e).

(e)(1) If a retailer increases the selling price of goods or services for a buyer who uses a credit card to compensate for interchange fees or other charges that the credit-card company will later deduct from the payment it forwards to the retailer's account, these increases shall be considered to be part of the selling price of the goods or services and shall be subject to tax.

(2) Interchange fees and other charges that a credit-card company deducts from a participating retailer's account shall be deemed charges for the financial services that the credit-card company has rendered for the retailer and shall not be deducted from the retailer's report of gross receipts or otherwise used to reduce the amount of sales tax being reported.

(f)(1) A progress payment shall mean a payment made to a contractor as work progresses on a construction project that may be conditioned on the percentage of work completed, the stage of work completed, the costs incurred by the contractor, a payment schedule, or some other basis. Each contractor who issues a bill or statement for a progress payment for a period in which the contractor performed taxable labor services shall report sales tax on the taxable services as part of its gross receipts.

(2) If a contractor reports sales tax on the cash basis, it shall report the taxable labor services it performed during the period covered by a progress payment on the return it files for the sales-tax reporting period in which it receives the progress payment. If a contractor reports sales tax on the accrual basis, it shall report the taxable services it performed during the period covered by a progress-billing statement on the return it files for the sales-tax reporting period in which it recognizes the charges on its progress-billing statement in its books and records as earned.

(g)(1) Unless otherwise provided by statute, each retailer that makes a layaway sale shall report sales tax on the total selling price of the goods sold on layaway when the final payment is made and the goods are delivered to the buyer. The tax rate that is applied to a layaway sale shall be the rate that is in effect at the time of delivery. An exemption may be claimed on a layaway sale only if the exemption is in effect at the time of delivery. If an unpaid balance remains when the goods are delivered, the transaction shall be reported as a credit sale that is consummated when the goods are delivered to the buyer.

(2) Sales tax shall be applied to a purchase made under a rain check in the same way that the tax is applied to a purchase made under a layaway sale.

(h)(1) Each retailer shall collect and remit tax in accordance with this subsection on any taxable sales of goods the retailer makes under a financing lease agreement or other conditional sale, unless the lease or sale satisfies one of the requirements listed in paragraphs (i)(2)(A) through (C).

(2) When an accrual-basis retailer sells goods at retail and the sale is financed under a financing lease, the retailer shall collect and remit sales tax at the time of sale on the full selling price of the goods. Sales tax shall be collected and remitted in this manner even if the retailer transfers title to the goods to a financial institution and possession of the goods to the third-party lessee or if the re-

tailer retains title to the goods and transfers possession to the lessee. Lease payments that a third-party lessee makes to a financial institution or retailer to discharge its loan-repayment obligations under a financing lease or other conditional sale shall not be subject to tax.

(3) A financial institution shall not claim a resale exemption for the purchase of goods that the financial institution is financing under a financing lease agreement.

(4) The transfer of title to the lessee upon completion of the lease payments required under a financing lease agreement shall not be subject to tax.

(i)(1) A contract shall be treated as a financing lease regardless of whether the underlying transaction is characterized as a lease or rental under generally accepted accounting principles, the internal revenue code, the uniform commercial code, K.S.A. 84-1-101 et seq. and amendments thereto, or any other provision of federal, state, or local law, if the contract requires the lessee to possess or control the goods under a security agreement or deferred payment plan that requires the transfer of possession or control of the goods to the lessee under either of the following:

(A) A security agreement or deferred payment plan that requires the transfer of title to the lessee upon completion of the required payments; or

(B) an agreement that requires the transfer of title upon completion of the required installment payments plus the additional payment of an option price, and the option price does not exceed the greater of $100 or 1% of the total required payments.

(2) Unless paragraph (i)(1) requires a contract to be treated as a financing lease, a contract shall be treated as an operating lease and not as a financing lease if the contract meets one of the following requirements:

(A) Contains a provision that allows the lessor to claim federal income tax depreciation benefits for the leased goods;

(B) allows the lessee to terminate the agreement at any time by returning the goods and making all lease payments due to the date of return; or

(C) qualifies as a Kansas consumer lease-purchase agreement under K.S.A. 50-680 et seq., and amendments thereto.

(j)(1) A late payment charge or penalty billed to a customer shall be exempt under this regulation only if the late payment charge or penalty is imposed for nonpayment of a credit balance that is owed under the parties' agreement for the extension of credit, a financing lease, or other conditional sale agreement.

(2) A late payment charge or penalty that is billed to a customer by a regulated utility, cable provider, telecommunications company, or other entity that operates under the authority granted by law or contract by a municipal, county, state, or federal governmental unit is not a credit charge imposed for the extension of credit and shall be subject to sales tax.

(3) A late payment charge or penalty imposed under an operating lease or rental agreement shall be subject to tax in accordance with subsection (d) of K.A.R. 92-19-55b. (Authorized by K.S.A. 2010 Supp. 75-5155 and K.S.A. 2010 Supp. 79-3618; implementing K.S.A. 2010 Supp. 75-5155, K.S.A. 2010 Supp. 79-3602, K.S.A. 2010 Supp. 79-3603, K.S.A. 2010 Supp. 79-3609, and K.S.A. 2010 Supp. 79-3618; effective April 1, 2011.)

92-19-3b. Allowances for bad debts. (a) General.

(1) For purposes of this regulation, "bad debt" shall mean any debt owed to or account receivable held by a retailer that can be claimed as a "wholly or partially worthless debt" deduction under 26 U.S.C. Section 166 that arose from the sale of goods or services upon which the retailer reported retailers' sales or use tax in a prior reporting period; and

(2)(A) A retailer shall be eligible to claim a bad debt allowance if the retailer meets the following conditions:

(i) Was the original seller of the taxable goods or services;

(ii) charged and remitted the retailers' sales or use tax on a sale that can be claimed as a worthless debt deduction under 26 U.S.C. Section 166; and

(iii) has written off the bad debt as worthless or uncollectible in its books and records.

(B) A certified service provider shall be eligible to claim a bad debt allowance on behalf of a retailer that meets the conditions in paragraph (a)(2)(A) if the provider meets the requirements in subsection (g).

(3) A claim for a bad debt allowance shall be considered to be filed with the department according to one of the following:

(A) On the due date of the return for the reporting period in which the bad debt is written off as uncollectible in the retailer's books and records,

when a deduction for the bad debt is taken on that return; or

(B) on the date that the retailer files a refund claim with the department, if part or all of a bad debt allowance is being claimed as a refund because the bad debt allowance was not taken as a deduction on the appropriate return or the deduction that was taken exceeded the amount of taxable gross receipts being reported on that return. The filing date for a refund claim provided by K.S.A. 79-3609, and amendments thereto, shall be the later of either the postmark date on the refund request or the postmark date on the required supporting documentation.

(4) Each claim by a retailer for a deduction, credit, or refund based on a bad debt allowance shall be made in accordance with this regulation. K.A.R. 92-19-3c shall control the treatment of goods that are repossessed by a retailer after the retailer has taken a bad debt allowance on the underlying credit sale of goods defaulted on by the retailers' customer.

(5) After a retailer sells, factors, assigns, or otherwise transfers an account receivable, installment contract, or other similar debt instrument for a discount of any kind that authorizes a third party to collect customer payments, the retailer shall not be eligible to claim a bad debt allowance, credit, or refund for bad debts that arise under an instrument that was sold or transferred at a discount. A third party that purchases or otherwise obtains a debt instrument from the retailer, and any person that subsequently purchases or otherwise obtains the debt instrument, shall not be eligible to claim a bad debt allowance, credit, or refund for an underlying credit sale of goods or services defaulted on by the retailer's customer.

(b) Determining the amount of a bad debt allowance.

(1) The bad debt allowance that may be claimed for sales tax purposes shall be the difference between the federal worthless debt deduction calculated for the sale or account pursuant to 26 U.S.C. Section 166(b) and the applicable adjustments and exclusions to the federal worthless debt deduction specified in K.S.A. 79-3674 and amendments thereto.

(2) No anticipatory or statistical sampling method of estimating the amount of a sales-tax bad debt allowance shall be allowed except as specified in K.S.A. 79-3674(h) and amendments thereto.

(3) If a retailer maintains a reserve account for bad debts, only charges against the bad debt reserve that have been written off the retailer's books and records may be claimed as a bad debt allowance.

(4) The amount of sales tax that is deducted, credited, or refunded under a bad debt allowance shall not exceed the difference between the tax that the retailer remitted to the department on a retail transaction and the tax that the retailer collected on the retail transaction.

(5) The amount of a bad debt allowance shall not include any finance charges, collection expenses, or repossession expenses that the retailer assigned to the consumer's account.

(6) Whenever the sales tax rate that was in effect at the time and place of the original sale is changed pursuant to a statutory rate change or the enactment or repeal of a local tax, the amount of the bad debt allowance shall be adjusted to account for the rate change before the bad debt allowance is claimed.

(7) In the absence of adequate records showing the contrary, it shall be presumed that the interest rate for financing charges that the retailer billed to a customer's delinquent account is the maximum rate of interest that the retailer charged on the same type of delinquent account during the same period that gave rise to the bad debt.

(8) No interest shall be paid by the department on any sales-tax bad debt deduction taken on a retailer's tax return. Interest on a refund claim filed to recover part or all of a bad debt allowance shall be computed as provided in subsection (e).

(c) How to claim a bad debt allowance.

(1)(A) A retailer that is required to file federal income tax returns shall claim a bad debt allowance as a deduction from the taxable gross receipts being reported on the return the retailer files for the reporting period in which the bad debt is charged off its books and records as uncollectible.

(B) A retailer that is not required to file federal income tax returns, including a church or other nonprofit entity, shall claim a bad debt allowance as a deduction from taxable gross receipts during the reporting period in which the bad debt is charged off its books and records, if the allowance would otherwise qualify for a worthless debt deduction under 26 U.S.C. Section 166 if the retailer were required to file federal income tax returns.

(2) If a retailer fails to timely claim a bad debt deduction on the return identified in paragraph (c)(1) or if a bad debt allowance exceeds the tax-

able gross receipts being reported on that return, the retailer shall file a refund request pursuant to K.S.A. 79-3609, and amendments thereto, to recover the bad debt allowance or the balance of the allowance. The retailer shall not claim a bad debt allowance as a deduction so that a negative balance is reported on a return, as a deduction on an amended return filed for an earlier reporting period, or as a deduction on a return filed for a later period.

(3) A refund request that is filed to recover a bad debt allowance shall not include any other type of refund claim. The supporting documentation shall clearly state that the refund request is based on a claim for a bad debt allowance and shall identify the sales tax reporting period in which the worthless debt deduction could have first been claimed for federal income tax purposes.

(4) A refund claim based on a bad debt allowance shall be denied if the due date of the return for the reporting period in which the retailer first became eligible to write off the worthless debt for federal income tax purposes is outside the limitation period specified in K.S.A. 79-3609, and amendments thereto, for filing refund claims.

(d) Substantiating documentation.

(1) The burden of establishing the right to and the validity of a sales-tax bad debt allowance shall be on the retailer. In order to verify each sales-tax bad debt allowance being claimed, the retailer shall retain records that show the following:

(A) The date when the retailer first became eligible to write off the worthless debt in the books and records that it maintains for federal income tax purposes;

(B) the amount of the worthless debt that was written off for federal income tax purposes and the amount of the worthless debt that is being claimed for Kansas sales tax purposes;

(C) any computations or adjustments made by the retailer to its federal worthless debt deduction to arrive at the bad debt allowance being claimed for Kansas sales tax purposes;

(D) any portion of the debt or worthless account that represents customer charges that were not taxed; and

(E) the amount of interest, finance charges, service charges, collection, and repossession costs that the retailer assigned to the debt or worthless account.

(2) The information specified in paragraphs (d)(1)(A) through (d)(1)(E) may be requested by the department at any time to substantiate a retailer's bad debt allowance claim.

(3) Any retailer that qualifies to claim a sales-tax bad debt allowance and whose volume and character of uncollectible or worthless accounts warrant an alternative method of substantiating the allowance may apply in writing to the director of taxation and ask to be allowed to maintain records other than those specified in this subsection. The retailer shall explain the reasons for the request, and the director may identify reasonable requirements that the retailer must meet as a condition to allowing the retailer to maintain records other than those specified in this subsection.

(e) A bad debt allowance submitted as a refund request. If a retailer claims a bad debt allowance by filing a refund request in accordance with paragraphs (c)(2) through (c)(4), the request shall be treated as the retailer's application for a refund. If a refund request based on a bad debt allowance is approved, either a credit memorandum or a refund payment may be issued by the department to the retailer for the approved amount. The amount credited or refunded shall not include interest, unless a credit memorandum or refund payment is not issued within the time provided for refunds by K.S.A. 79-3609, and amendments thereto. If a credit memo or refund payment is issued after the time provided for refunds, interest shall be computed from the later of either the filing date of the refund request or the filing date of the supporting documentation required by K.S.A. 79-3693, and amendments thereto.

(f) Recovery of allowances previously taken. If a retailer collects payment for goods or services or repossesses goods that were the basis of a bad debt allowance, the retailer shall apply the payment first proportionally to the selling price of the goods or services and the corresponding sales tax that remains unpaid and then to any other charges that are owed on the customer's account, including interest, service charges, and collection costs billed to the customer. The retailer shall report the payment amount that is apportioned to the selling price of the taxable goods or services as part of its taxable gross receipts for the period in which the payment is received.

(g) Certified service providers.

(1) If a retailer's filing responsibilities have been assumed by a certified service provider, the certified service provider may claim, on the retailer's behalf, any bad debt allowance that the retailer could claim under this regulation. The

certified service provider shall provide a credit or issue a refund to the retailer for the full amount of any bad debt allowance that the provider recovers. No person other than the retailer who reported the taxable transaction and reported tax to the department, or a retailer's certified service provider, shall be entitled to claim a bad debt allowance that is based on a worthless debt or uncollectible account.

(2) If the books and records of the retailer or certified service provider claiming a sales-tax bad debt allowance support an allocation of the sales-tax bad debts among the member states on a particular customer's uncollectible account, the allocation shall be allowed pursuant to K.S.A. 79-3674, and amendments thereto. (Authorized by K.S.A. 2010 Supp. 75-5155 and 79-3618; implementing K.S.A. 2010 Supp. 79-3609, 79-3674, and 79-3693; effective April 1, 2011.)

92-19-3c. Repossessed goods. (a) Each retailer that repossesses goods that were the basis of a bad debt allowance under K.A.R. 92-19-3b, and each financial institution that repossesses goods, shall account for the repossessed goods in accordance with this regulation.

(b) The recovery of goods being repossessed and the transfer of title to the goods from the debtor to the retailer or financial institution are not retail sales and shall not be taxed.

(c) When repossessed goods are resold by a retailer at retail, the receipts from the sale shall be reported as part of the retailer's gross receipts. When repossessed goods are resold by a retailer as a sale for resale, a retailer that previously claimed a bad debt allowance on the goods shall account for the receipts as an allowance recovery in accordance with K.A.R. 92-19-3b(f).

(d) When goods are repossessed by a financial institution, the resale of the goods by the financial institution and the transfer of title to the buyer shall be treated as nontaxable isolated or occasional sales.

(e) When a debtor satisfies the underlying debt after goods are repossessed, the return of goods and the transfer of title to the goods to the debtor are not retail sales and shall not be taxed. A retailer that previously claimed a bad debt allowance on the goods shall report the taxable gross receipts that are included in the payment from the debtor in accordance with K.A.R. 92-19-3b(f).

(f) When a retailer or financial institution uses repossessed goods other than for retention, demonstration, or display while holding the goods for resale in the regular course of business, the retailer or financial institution shall accrue sales tax on its use of the repossessed goods as the rental of the goods. (Authorized by K.S.A. 2009 Supp. 75-5155 and 79-3618; implementing K.S.A. 2009 Supp. 79-3602, K.S.A. 2009 Supp. 79-3603 as amended by L. 2010, Ch. 160, sec. 1, K.S.A. 2009 Supp. 79-3607 as amended by L. 2010, ch. 123, sec. 11, K.S.A. 2009 Supp. 79-3609 as amended by L. 2010, ch. 123, sec. 12, K.S.A. 2009 Supp. 79-3615, 79-3618 and 79-3674; effective April 1, 2011.)

92-19-10. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3602, 79-3603 as amended by L. 1987, Ch. 182, Sec. 108, K.S.A. 1986 Supp. 79-3607; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988; revoked April 1, 2011.)

92-19-16a. Gifts, premiums, prizes, coupons, and rebates. (a) Each sale of tangible personal property shall be taxable if made to a person who will use the property as a prize or premium or who will give the property away as a gift. Donors of articles of tangible personal property shall be regarded as the users or consumers of the property. If a retailer donates property that was originally acquired for resale, the retailer shall accrue tax on the cost it paid for the property when the retailer files its next sales tax return, unless the retailer donates the property to an entity that is exempt from taxation on its purchases under K.S.A. 79-3606, and amendments thereto, or has provided the retailer with a resale exemption certificate.

(b) If a retailer making a retail sale that is subject to tax gives a premium or prize along with the item being sold, the transaction shall be regarded as the sale of both items to the purchaser if delivery of the premium or prize does not depend on chance.

(c) If the award of a premium or prize by a retailer depends on chance, the retailer's acquisition of the premium or prize shall be subject to sales tax. The retailer shall pay the tax at the time of acquisition of the premium or prize or, if the item is removed from resale inventory, shall accrue tax on the item's cost on its sales tax return.

(d) If a retailer accepts a coupon for a taxable product and will later be reimbursed by a manufacturer or other party for the reduction in selling

price, the total sales value, including the coupon amount, shall be subject to sales tax. If a retailer accepts a coupon and will not be reimbursed for the reduction in selling price, the reduction shall be considered a discount, and the taxable amount shall be the net amount paid by the customer after deducting the value of the coupon. If a retailer enhances the value of a manufacturer's coupon, the amount of the unreimbursed enhancement shall be treated as a discount that is not subject to sales tax.

(e) For purposes of this regulation, "rebate" shall mean a return of part of the amount paid for a product after the time of sale, which is commonly obtained by sending proof of purchase to the manufacturer. Like manufacturers' coupons, a manufacturer's rebate is a form of payment. Therefore, even if a manufacturer's rebate is assigned to a retailer at the time of sale, the rebate shall not reduce the amount that is subject to sales tax.

(f) Sales of gift certificates, meal cards, or other forms of credit that can be redeemed by the holder for the equivalent cash value shall not be subject to tax when sold. If the certificate or other form of credit is used as a cash equivalent to purchase taxable goods or services, the retailer who redeems the certificate or other form of credit shall charge sales tax on the selling price of the goods or services, which shall not be reduced by the amount of the certificate or other credit being redeemed.

(g) Sales of coupon books and similar materials that entitle the holder to a discount or other price advantage on the purchase of goods or services shall be presumed to have value in addition to the coupons or discounts contained in them and shall be taxable as sales of tangible personal property, except when the sale of this type of book is by a nonprofit organization that treats the receipts from the sales as a donation. If a coupon is redeemed from a coupon book or other material sold at retail, the retailer who redeems the coupon shall charge sales tax in accordance with the requirements for sales made with coupons that are specified in subsection (d).

(h) If a nonprofit organization treats receipts from the providing of coupon books and similar materials as donations, the nonprofit organization shall be liable for paying sales tax when it purchases the coupon books or other materials that are provided to a donor when a donation is made, unless the organization is otherwise exempted from paying tax on its purchases. If a coupon is redeemed, the retailer who redeems the coupon shall charge sales tax in accordance with the requirements for sales made with coupons that are specified in subsection (d). (Authorized by K.S.A. 2009 Supp. 75-5155 and 79-3618; implementing K.S.A. 2009 Supp. 79-3602 and K.S.A. 2009 Supp. 79-3603 as amended by L. 2010, ch. 160, sec. 1; effective July 27, 2001; amended April 23, 2007; amended April 1, 2011.)

92-19-16b. (Authorized by K.S.A. 2005 Supp. 75-5155 and K.S.A. 2005 Supp. 79-3618; implementing K.S.A. 2005 Supp. 79-3602, as amended by L. 2006, Ch. 202, Sec. 1, K.S.A. 2005 Supp. 79-3607, and K.S.A. 2005 Supp. 79-3609; effective April 13, 2007; revoked April 1, 2011.)

92-19-40. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; amended May 1, 1988; revoked April 1, 2011.)

92-19-42. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1980 Supp. 79-3602, 79-3603, 79-3606; effective May 1, 1981; revoked April 1, 2011.)

92-19-49b. Goods returned when a sale is rescinded. (a)(1) When a retailer and consumer rescind a taxable sale of goods that the retailer reported on an earlier return, the retailer shall be entitled to deduct the original selling price of the returned goods from its current report of gross receipts, except as provided in paragraph (a)(2). A retail sale of goods shall be considered to be rescinded once the retailer accepts possession of the returned goods and the consumer accepts the repayment of all or part of the selling price and sales tax that was originally paid to buy the goods. This repayment to the consumer may be made by credit or refund.

(2) If a retailer reduces the amount credited or refunded to the consumer for the returned goods as compensation for depreciation, consumer usage, or any other reduction in the value of the goods, the amount of the reduction shall be considered a charge by the retailer for the consumer's use of the goods and shall be subject to sales tax as if it were a rental charge being billed to the consumer. Both the deduction from gross receipts taken by the retailer on its current return and the selling price credited or refunded to the consumer

shall be reduced by the amount taken as compensation for the reduced value of the goods. The amount of tax that is required to be credited or refunded to the consumer shall be reduced in a proportional amount.

(3) A retailer shall not be required to report its taxable receipts from a retail sale that is rescinded if the original sale, the acceptance of the returned goods by the retailer, and the full repayment to the consumer are all completed during one reporting period. If only partial repayment of the selling price and sales tax is made to the consumer, the retailer shall report the amount used as the reduced value of the goods as part of its gross receipts for that reporting period.

(4) If a retailer does not reduce the amount refunded to a consumer under paragraph (a)(2) or (a)(3) for a reduction in the value of the goods and charges a restocking or reshelving fee to the consumer after goods are returned, this fee shall not be taxable. A restocking or reshelving fee shall be defined as a fee charged by a retailer to cover the time and expense incurred returning goods to resale inventory if the consumer has not used the goods in a way that reduces their value.

(b) Each retailer shall maintain records that clearly establish and support its deduction claim when a sale is rescinded.

(c) Any retailer may take a deduction or credit for a refund claim on its sales tax return only if the deduction or credit has been authorized in writing by the department or is allowed under this regulation, K.A.R. 92-19-3b, K.A.R. 92-19-3c, or another department regulation. All other refund claims shall be made by submitting a written refund application to the department, in accordance with K.A.R. 92-19-49c.

(d) Repossessed goods shall be treated as specified in K.A.R. 92-19-3c.

(e) Despite any other provision of this regulation, any motor vehicle manufacturer, manufacturer's agent, or authorized dealer may apply to the department for a refund or take a deduction during the reporting period if a consumer returns a motor vehicle in accordance with K.S.A. 50-645, and amendments thereto, and is refunded the total amount that the consumer paid for the vehicle, including sales tax, less a reasonable allowance for the consumer's use of the vehicle, which shall include the sales tax associated with that use. The manufacturer, agent, or dealer shall maintain records that clearly reflect the acceptance of the returned vehicle under K.S.A. 50-645 and amendments thereto, the amount of the refund, and the amount of taxes refunded. (Authorized by K.S.A. 2009 Supp. 75-5155 and K.S.A. 2009 Supp. 79-3618; implementing K.S.A. 2009 Supp. 79-3607 as amended by L. 2010, ch. 123, sec. 11, and K.S.A. 2009 Supp. 79-3609 as amended by L. 2010, ch. 123, sec. 12; effective May 27, 2005; amended April 1, 2011.)

92-19-55b. Operating leases. (a) Definitions.

(1) "Financing lease" shall have the meaning specified in K.A.R. 92-19-3a.

(2) "Goods" shall have the meaning as specified in K.A.R. 92-19-3a. For purposes of this regulation, "equipment" may be substituted for the word "goods" whenever equipment rentals or leases are being considered.

(3) "Lease or rental" shall have the meaning specified in K.S.A. 79-3602, and amendments thereto. When used in this regulation, these two terms and their derivatives are synonymous.

(4) "Lessee" shall mean a person who acquires the right to possess or control goods under a lease or rental agreement.

(5) "Lessor" shall mean a person who is engaged in the business of leasing or renting goods to others.

(6) "Operating lease" shall mean a lease agreement that gives the lessee possession or control of goods for a fixed or indeterminate period, while the lessor retains all or substantially all of the risk and rewards of ownership of the goods. This term shall be synonymous with "true lease."

(7) "Primary property location" shall have the meaning specified in K.S.A. 79-3670, and amendments thereto.

(8) "Sales tax" or "tax" shall have the meaning specified in K.A.R. 92-19-3a.

(9) "Transportation equipment" shall have the meaning specified in K.S.A. 79-3670, and amendments thereto. When the term "motor vehicle" or "vehicle" is used, the term shall mean any passenger vehicle, truck, trailer, semitrailer, or truck tractor, as defined in K.S.A. 8-126 and amendments thereto, that is not classified as "transportation equipment" under K.S.A. 79-3670, and amendments thereto.

(b) Operating leases and rentals.

(1) Each agreement that is structured as a lease shall be treated as an operating lease unless the agreement meets the definition of a "financing lease" in K.A.R. 92-19-3a. Any operating-lease

agreement may contain a future option to purchase the goods that are being leased or to extend the agreement, or both. Each oral lease shall be treated as an operating lease.

(2) Each person who rents or leases goods at retail for use in Kansas under an operating lease shall be deemed a retailer doing business in this state and shall register with the department and report tax on its taxable receipts as provided in this regulation. If tax is not collected on a taxable charge for a rental or lease, the tax together with interest and penalty may be collected by the department from either the lessor or the lessee.

(3) Each lessor shall collect tax on every taxable rental or lease charge that it bills to its lessees. A lessor shall not forgo this collection duty and elect instead to pay sales tax when the lessor buys goods to rent or lease.

(4) Each recurring periodic payment made under a rental or lease agreement shall be treated as a payment for a separate sales transaction in time units defined by the agreement of the parties. Each recurring periodic payment period under an agreement shall be treated as a complete sale for purposes of determining the following:

(A) Whether tax is required to be collected or paid on a periodic payment because of the enactment of a new tax imposition or exemption;

(B) whether a change in the tax rate applies to a periodic payment;

(C) what the appropriate local tax jurisdiction is when the primary property location is changed from one local taxing jurisdiction in Kansas to another; and

(D) what the appropriate state tax jurisdiction is when the primary property location is changed to Kansas from another state or from Kansas to another state.

(5) If a lease or rental agreement does not require recurring periodic payments to be made, the lump-sum payment shall be treated as a complete sale for purposes of applying exemptions, tax rates, sourcing requirements, and other requirements of the sales tax act to the lease payment. No refund claim shall be allowed or assessment issued that is based on an enactment that takes effect after payment but during the term of this type of lease or rental, unless the enactment specifies otherwise.

(6) Each "rent-to-own" or "rental-purchase" agreement that is subject to the Kansas consumer lease-purchase agreement act, K.S.A. 50-680 et seq. and amendments thereto, shall be treated as an operating lease. A reinstatement fee charged under this type of an agreement shall be taxable.

(7) A rental or lease shall not qualify for exemption as an isolated or occasional sale of goods.

(c) Sourcing receipts from operating leases. Each receipt from the lease or rental of goods shall be sourced according to the following:

(1) Classification of the receipt as a down payment, recurring periodic payment, or a single payment for the entire lease or rental period; and

(2) the type of goods being leased or rented.

Each different type of receipt shall be sourced according to K.S.A. 79-3670 and amendments thereto.

(d) Computation of the tax.

(1) Sales tax shall be computed on the total amount of each lease charge billed to the lessee without any deduction for mandatory insurance, damage waiver fees, property taxes, maintenance, service, repair, pickup, delivery, and other handling charges, administrative charges, late payment charges or penalties, reinstatement fees, late return charges, fuel charges, surcharges, and other charges or expenses whether paid by the lessor or lessee. Each of these fees or expenses shall be considered to be part of a taxable lease charge, even when the fee or expense is separately stated on an invoice given to a lessee or when separate contracts are entered into for the rental or lease and for the payment of one or more of these fees or expenses.

(2) All payments of interest, financing, and carrying charges, and any other payment that a lessee makes to reimburse a lessor for the costs or expenses the lessee incurs under the lease, shall be subject to sales tax whether billed as a separate line-item charge or on a separate invoice.

(3) When a rental or lease agreement has been subject to sales tax, sales tax shall apply to any charge made for either of the following:

(A) The cancellation of the agreement; or

(B) the early return of the rented or leased goods.

(4) Each late return charge that is billed for a customer's failure to return goods to a rental company or other lessor within the agreed-upon rental or lease term shall be treated as a charge for the customer's continued possession or control of the goods. This charge shall be subject to sales tax regardless of whether the charge meets any of the following conditions:

(A) Is designated a late return charge, a penalty, or a credit charge;

(B) exceeds the standard rental charge; or

(C) is a flat charge that appears to be a fine.

(e) A lessor's purchase of goods to rent or lease.

(1) Any registered lessor that rents or leases goods may claim that the goods are purchased for resale when the lessor buys goods for the sole purpose of renting or leasing to others.

(2) A lessor that rents or leases equipment or other goods to others shall not claim the equipment or goods are purchased for resale when the lessor buys the equipment or goods if the lessor engages in a service business that does either of the following:

(A) Uses the equipment or other goods to perform services, in addition to renting or leasing the equipment or goods; or

(B) furnishes the equipment or goods to others with an operator.

(3) If a lessor paid tax when it purchased goods, the payment of tax shall not exempt any subsequent charges that the lessor bills for the rental or lease of the goods and shall not entitle the lessor to claim a credit for the taxes paid. Each lessor that is allowed to claim that goods are purchased for resale as provided in paragraph (e)(1) but paid tax on the purchase of the goods in error shall apply to the department for a refund of the tax.

(4) If a lessor that purchased goods solely for rental or lease later withdraws the goods from its rental or lease inventory for its own occasional use and then returns them to its inventory, the lessor shall accrue sales tax on the regular rental amount that the retailer would charge to a customer for use of the goods under a rental or lease agreement.

(f) Purchases of repair services and repair parts.

(1) A lessor's purchases of repair services and repair parts for incorporation into the goods or equipment that the lessor uses exclusively to rent or lease shall not be considered to be a retail sale. A lessor's purchases of oil, grease, filters, lubricants, and similar items that are purchased for use in equipment that the lessor uses exclusively to rent or lease shall not be considered to be a retail sale. Sales tax shall be collected on any charges for these items that are separately billed to a lessee.

(2) The sale of repair services, repair parts, oil, grease, filters, lubricants, and similar items to a rental or lease business for use in equipment in its rental or lease inventory shall be a retail sale if the business uses equipment from its inventory to perform services or if the business furnishes equipment from its inventory to others with an operator.

(g) Furnishing equipment with an operator.

(1) Each charge for furnishing equipment with an operator who will use the equipment to perform services shall be taxed as a service rather than a rental or lease and shall be subject to the impositions on services set forth in K.S.A. 79-3603, and amendments thereto.

(2) Each lessor shall charge and collect sales tax on each lease or rental charge that the lessor bills to a lessee who intends to use the equipment being rented or leased to perform services for others.

(3) When a lessee bills a customer for taxable services that it performed using leased equipment, the lessee shall not deduct or otherwise exclude the lease charges that it paid to the lessor when the lessee bills its customer for the taxable services.

(4) Equipment shall be considered to be leased or rented rather than provided with an operator if the only services the lessor provides are setup, inspection, or maintenance services that are performed on the leased equipment itself.

(h) Disposal of rental or lease inventory. When goods that were purchased for rental or lease are sold at retail, the lessor shall collect sales tax on the full selling price without regard to any tax that has been collected and remitted on receipts from the rental or lease of the goods. The sale of any goods that a retailer makes from its rental or lease inventory shall not qualify as an isolated or occasional sale.

(i) Real property considerations.

(1) If a contract for the rental or lease of real property requires goods, including furniture and restaurant equipment, to be provided to a tenant with real property, no sales tax shall be due on any amount that is separately charged to the tenant for the goods. When a business purchases or leases goods to use to furnish or equip an apartment, office, restaurant, or other real property that the business intends to lease or rent, the sale or lease of the goods to the business shall be considered a retail sale or lease, and the business shall pay sales tax on the purchase price or lease charges as the final user of the goods.

(2) Each rental or lease of goods, including computers, typewriters, and word processors, to a person who obtains the exclusive right to use the goods for a fixed term shall be subject to sales tax even though the goods are attached or affixed to

real property, unless the goods are being furnished with the rental or lease of a real property as specified in paragraph (i)(1).

(3) For purposes of determining the taxability of a rental or lease transaction that involves tangible personal property attached to realty, taxability shall be presumed if the property being leased or rented is considered "goods" pursuant to K.S.A. 84-2-107(2), and amendments thereto, unless the goods are being furnished with the rental or lease of real property as specified in paragraph (i)(1).

(j) Exemptions, discounts, and deductions. Any discount, deduction, or exemption may be claimed when a rental or lease of goods or services is entered into if the same discount, deduction, or exemption would be allowed when the same goods or services are sold at retail. When a lessee that makes recurring periodic payments claims entitlement to a new discount, deduction, or exemption that first takes effect during the term of a lease, any discount, deduction, or exemption may be applied to the periodic payments as provided in paragraph (b)(4).

(k) Conditional sales. Each financing lease and other financing transactions shall be taxed as provided in K.A.R. 92-19-3a. (Authorized by K.S.A. 2010 Supp. 75-5155 and 79-3618; implementing K.S.A. 2010 Supp. 79-3602, 79-3603, 79-3604, 79-3618, 79-3669, 79-3670, and 79-3702; effective April 1, 2011.)

92-19-59. Private letter rulings. (a) A "private letter ruling" shall mean a statement of the secretary of revenue or the secretary's authorized agent issued to an individual retailer and shall be of limited application. A private letter ruling interprets the statute or regulation to which the ruling relates. A private letter ruling is issued in response to a retailer's written request for clarification of the tax statute or regulation relating to a specified set of circumstances affecting the retailer's collections duties as they relate to a claim of exemption from sales tax.

(b) A retailer, consumer, or other person shall not rely upon a verbal opinion from the department of revenue. Only a written private letter ruling issued to a retailer that concerns the retailer's collection duties shall bind the department. Each retailer seeking a private letter ruling from the department shall submit a written request for the ruling to the department. The written request shall identify the retailer and state with specificity the facts and circumstances relating to the issue for which the ruling is sought. If insufficient facts are presented with a retailer's request for a ruling, a private letter ruling shall not be issued by the department. If material facts are misrepresented in a retailer's request for a ruling, a private letter ruling that is issued by the department shall be of no effect and shall not be binding on the department. Department correspondence that does not state that the correspondence is a "private letter ruling" shall not be considered or otherwise treated as a private letter ruling.

(c) Nothing contained in a private letter ruling shall be construed as altering any provision of the Kansas retailers' sales tax act or any department regulation or as otherwise meeting any of the following conditions:

(1) Having the force and effect of law;

(2) being a notice, revenue ruling, or other tax-policy statement that has been published by the department; or

(3) being a precedent that can be cited or relied upon by any person other than the retailer to whom the ruling is issued, except to identify a ruling that is being relied upon as support for a request for the reduction or waiver of penalty or interest.

(d) If a private letter ruling erroneously instructs an individual retailer that it is not required to collect sales tax under a specific set of facts and circumstances, that retailer shall be absolved of its statutory duty to collect sales tax under a comparable set of facts and circumstances, unless the ruling has been rescinded or was based on the retailer's misrepresentation of material facts. A consumer that did not pay the tax to the retailer shall continue to be liable for the uncollected tax. However, if the consumer belatedly pays or is later assessed the tax, penalty shall be waived, and any interest on the consumer's late payment may be waived or reduced, upon the consumer's request unless the consumer misrepresented material facts to either the retailer or the department.

(e) Each private letter ruling shall cease to be valid and shall be deemed to have been rescinded when any one of the following occurs:

(1) A statute or regulation that the department relied upon as a basis for the ruling is changed in any substantive part by the Kansas legislature or department of revenue.

(2) A substantive change in the interpretation of a statute or regulation that the department re-

lied upon as a basis for the ruling is made by a court decision.

(3) An interpretation that the department relied upon as a basis for the ruling is changed in any substantive part by a more recent department notice, guideline, revenue ruling, or other published policy directive that rescinds all prior published policy statements about issues that are discussed in the policy directive. Any policy statement that has been rescinded by the department may be cited as support for a taxpayer's request for the reduction or waiver of penalty or interest. (Authorized by K.S.A. 2009 Supp. 75-5155 and 79-3618; implementing K.S.A. 2009 Supp. 79-3604 and K.S.A. 79-3646; effective May 1, 1988; amended April 1, 2011.)

92-19-73. Membership fees and dues. (a) Each public or private club, organization, or business charging dues to members for the use of the facilities for recreation or entertainment shall collect sales tax on the gross receipts received from the dues, except for the following:

(1) Clubs and organizations that are exempt from property tax pursuant to the "eighth" paragraph of K.S.A. 79-201 and amendments thereto, including the American legion, the veterans of foreign wars, and certain other military veterans' organizations;

(2) clubs and organizations that are exempt from property tax pursuant to the "ninth" paragraph of K.S.A. 79-201 and amendments thereto, including the Y.M.C.A., Y.W.C.A., Boy Scouts, Girl Scouts, and certain other humanitarian community service organizations; and

(3) nonprofit organizations that support nonprofit zoos, if the organization is exempt pursuant to section 501(c)(3) of the federal internal revenue code of 1986 and the dues are used to support the operation of the zoo.

(b)(1) "Dues" means any charge that is a debt owed to the club, organization, or business by an existing member or prospective member in order for the member or prospective member to enjoy the use of the facilities of the club, organization, or business for recreation or entertainment, and, except as provided in paragraph (b)(2), shall include periodic or one-time special assessments, initiation fees, and entry fees charged to members by a nonprofit club or organization if a member's continued nonpayment of the assessment or fee will result in the loss of membership or membership rights.

(2) Dues shall not include the redeemable amount of a contribution required for membership in an equity country club or other equity entity organized for recreation or entertainment in which none of the net earnings inure to the benefit of any shareholder or other person, including organizations described by I.R.C. 501(c)(7), if the club or organization is obligated to repay the redeemable amount of the contribution, and the redeemable amount either is reflected as a liability owed to the member on the club's or organization's books and records or is required to be repaid to the member under a written contract. The repayment obligation may be conditioned upon the club's or organization's receipt of a membership contribution from a new member. The redeemable amount of a contribution required for membership shall include payments made by a member or prospective member for membership stock, certificates of membership, refundable deposits, refundable capital improvement surcharges, refundable special or one-time assessments, or similar membership payments in an amount equal to the amount that the club or organization is obligated to repay to the member. These payments to a club shall not be considered redeemable contributions if the club's repayment obligation is contingent solely on a club ceasing its operations as a nonprofit social organization sometime in the future.

(3) If all or part of a redeemable contribution paid to acquire or retain membership ceases to be carried as a liability on the books and records of a club that continues operation, or its successor, and the contribution has not been redeemed by a former member or former member's estate, the amount of the contribution that is no longer carried as a liability and can no longer be redeemed shall be subject to sales tax.

(c) "Recreation or entertainment" means any activity that provides a diversion, amusement, sport, or refreshment to the member. This term shall include the health, physical fitness, exercise, and athletic activities identified in K.A.R. 92-19-22b.

(d) An exemption for gas, fuel, or electricity shall not be allowed for a public or private club, organization, or other business that charges dues to members if the gas, fuel, or electricity is utilized for heating, cooling, or lighting a building, facility, or other area that is used for recreation or entertainment. An exemption shall not be allowed for water, cleaning supplies, toilet supplies, sanitary

supplies, and other consumables and supplies that are used by a public or private club, organization, or other business that enable dues-paying members or others to use the building or facility for recreation or entertainment. These exemptions shall not be allowed regardless of whether the business charges dues-paying members or others for admission or for participation in sports, games, or recreation. (Authorized by K.S.A. 2009 Supp. 75-5155 and K.S.A. 2009 Supp. 79-3618; implementing K.S.A. 2009 Supp. 75-5155, K.S.A. 2009 Supp. 79-3603 as amended by L. 2010, ch. 160, sec. 1 and K.S.A. 2009 Supp. 79-3618; effective May 1, 1988; amended July 27, 2001; amended April 1, 2011.)

Article 24.—LIQUOR DRINK TAX

92-24-23. Bond. (a) Each applicant or licensee submitting an application for a new license or for renewal of an existing license shall post or have posted with the department of revenue a bond in an amount equal to three months' average liquor drink tax liability or $1000, whichever is greater, at the time of the application. Any new applicant who has no previous tax experience may estimate that person's expected liquor drink tax liability projected over a 12-month period and submit a bond in an amount equal to 25% of the projected tax liability or $1000, whichever is greater. A certificate of liquor drink tax registration shall not be issued until the bond requirement is satisfied.

(b) Bond requirements may be satisfied through surety bonds purchased from a corporate surety, escrow bond agreements, or the posting of cash bonds.

(c) An additional bond may be required by the secretary of revenue at any time if the existing bond is not sufficient to satisfy the three months' average liability of the licensee.

(d) The existing liquor drink tax bond requirement for any licensee may be waived by the secretary of revenue if the relief is requested in writing and the licensee has remained compliant with K.S.A. 79-41a01 et seq., and amendments thereto, for at least 24 consecutive months before the date of the request for bond relief. If, after the bond is released, the licensee becomes delinquent in filing and remitting the liquor drink tax, a bond shall be required for any subsequent renewal of the license. (Authorized by and implementing K.S.A. 2009 Supp. 79-41a03; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988; amended Jan 4, 2002; amended Nov. 29, 2010.)

Article 26.—AGRICULTURAL ETHYL ALCOHOL PRODUCER INCENTIVE

92-26-1. Definitions. As used in this article, these terms shall have the following meanings: (a) "Agricultural commodities" shall mean all materials used in the production of agricultural ethyl alcohol, including grains and other starch products, sugar-based crops, fruits and fruit products, forage crops, and crop residue.

(b) "Director" shall mean the director of taxation of the department of revenue.

(c) "Fiscal year" means a period of time consistent with the calendar periods of July 1 through the following June 30.

(d) "Principal place of facility" means a plant or still located in the state of Kansas that produces or has the capacity to produce agricultural ethyl alcohol.

(e) "Production" means the process of manufacturing agricultural ethyl alcohol. For the purposes of this article, the terms "produce" and "produced" shall be consistent with the definition of "production."

(f) "Quarter" means a period of time consistent with the calendar periods of January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. For the purposes of this article, the term "quarterly" shall be consistent with the definition of "quarter."

(g) "Spirits" means an inflammable liquid produced by distillation.

(h) "Wine gallon" means 231 cubic inches measured at 60 degrees Fahrenheit. (Authorized by K.S.A. 2008 Supp. 79-34,163; implementing K.S.A. 2008 Supp. 79-34,161 and 79-34,163; effective, T-88-34, Sept. 17, 1987; amended May 1, 1988; amended Feb. 27, 2009.)

92-26-4. Filing of quarterly reports; deadline. (a)(1) Each ethyl alcohol producer producing agriculture ethyl alcohol in the state of Kansas shall file a Kansas qualified agricultural ethyl alcohol producer's report with the director of taxation within 30 days from the last day of each quarter. Each producer not filing a report within 30 days after the last day of any quarter in a fiscal year shall be barred from seeking one quarter of any payment due from the agricultural ethyl al-

cohol producer's fund for that fiscal year. Upon proof satisfactory to the secretary of extenuating circumstances preventing timely submission of the report by the producer, this penalty may be waived by the secretary.

(2) Production incentives shall be paid on a fiscal year basis from the new production account or the current production account in the agricultural ethyl alcohol producer incentive fund, whichever account is applicable. When the production incentive amount for the number of agricultural ethyl alcohol gallons sold by any producer to a qualified alcohol blender exceeds the balance in the applicable account at the time payment is to be made for that fiscal year's production, the incentive per gallon shall be reduced proportionately so that the current balance of the applicable account is not exceeded. Any amount remaining in the account following a fiscal year payment of producer incentives shall be carried forward in that account to the next fiscal year for payment of future production incentives, except when the current production account balance is required by K.S.A. 79-34,161, and amendments thereto, to be transferred to the new production account. The quarterly reports for a fiscal year shall be for the third and fourth quarters of one calendar year and the first and second quarters of the following calendar year.

(b) Each quarterly report shall be submitted on forms furnished by the director and shall contain the following information:

(1) The beginning inventory of denatured alcohol;

(2) the amount of alcohol produced and denaturant added;

(3) the amount of agricultural ethyl alcohol sold to qualified blenders;

(4) the amount of denatured alcohol sold to other than qualified blenders;

(5) the amount of denatured alcohol sold or used for miscellaneous purposes, including denatured alcohol that has been lost, destroyed, or stolen;

(6) the name of the liquid fuel carrier and the liquid fuel carrier's federal employer identification number;

(7) the mode of transportation;

(8) the point of origin, specifying city and state;

(9) the point of destination, specifying city and state;

(10) the name of the company to which the product was sold;

(11) the date the product was shipped;

(12) the identifying number from the bill of lading or manifest;

(13) the number of gross gallons sold; and

(14) the product code.

Each ethyl alcohol producer filing a quarterly report shall furnish all information required by the director before receiving the funds. (Authorized by K.S.A. 2008 Supp. 79-34,163; implementing K.S.A. 2008 Supp. 79-34,161 and 79-34,163; effective, T-88-34, Sept. 17, 1987; amended May 1, 1988; amended Nov. 12, 2004; amended Feb. 27, 2009.)

Article 28.—RETAIL DEALER INCENTIVE

92-28-1. Definition. "Quarter" shall mean any of the following periods in each calendar year:

(a) January 1 through March 31;

(b) April 1 through June 30;

(c) July 1 through September 30; or

(d) October 1 through December 31.

For the purposes of this article, the term "quarterly" shall be consistent with the definition of "quarter" in this regulation. (Authorized by and implementing K.S.A. 2007 Supp. 79-34,174; effective Feb. 13, 2009.)

92-28-2. Filing of quarterly reports; deadline. (a)(1) Each Kansas retail dealer seeking a Kansas retail dealer incentive shall file a retail dealer's report with the secretary of revenue within 30 days after the last day of each quarter. Each retail dealer not filing a retail dealer's report within 30 days from the last day of the quarter shall be barred from seeking payment from the Kansas retail dealer's incentive fund for that quarter. Each retail dealer's report shall be filed in the same manner as that for the motor fuel retailers' informational return, with respect to filing for single or multiple locations.

(2) The Kansas retail dealer incentives shall be paid on a quarterly basis. If the retail dealer incentive amounts claimed, based on the number of gallons of renewable fuels or biodiesel fuel sold or dispensed by Kansas retail dealers, exceed the balance in the Kansas retail dealer incentive fund, the incentive per gallon shall be reduced proportionately so that the balance in the Kansas retail dealer incentive fund is not exceeded. If any amount remains in the Kansas retail dealer incentive fund following each quarterly payment of Kansas retail dealer incentives, that amount shall be carried for-

ward in the Kansas retail dealer incentive fund to the next quarter for the payment of future incentives.

(b) Each Kansas retail dealer filing a quarterly retail dealer's report shall be a licensed motor fuel retailer and shall have filed all monthly motor fuel retailers' informational returns and any other relevant information as required by the secretary of revenue before receiving any incentive funds.

(c) Each quarterly retail dealer's report shall be filed electronically with the department of revenue and shall include the following information:

(1) The total number of gallons of gasoline, gasohol, ethanol, diesel, and biodiesel sold;

(2) the total number of gallons of renewable fuel and biodiesel sold; and

(3) any other relevant information that the secretary of revenue requires in order to determine entitlement to and the amount of any incentive payment. (Authorized by and implementing K.S.A. 2007 Supp. 79-34,174; effective Feb. 13, 2009.)

92-28-3. Record requirements. (a) Each Kansas retail dealer shall maintain the following records for each quarter:

(1) The quantity and product type of all fuel received;

(2) the quantity and product type of all fuel sold or dispensed;

(3) the method of disbursement; and

(4) invoices and bills of lading.

(b) The records specified in subsection (a) shall contain sufficient information to allow the secretary of revenue to determine the quantity and product type of all fuel received, sold, or dispensed and the method of disbursement. Any retail dealer may use records prepared for other purposes if the records contain the information required by subsection (a).

(c) Each retail dealer shall retain the required records for at least three years. The records shall be available at all times during business hours and shall be subject to examination by the secretary of revenue or the secretary's designee. (Authorized by K.S.A. 2007 Supp. 79-34,174; implementing K.S.A. 2007 Supp. 79-3415 and 79-34,174; effective Feb. 13, 2009.)

92-28-4. Funds erroneously paid; informal conferences. (a) If the secretary of revenue determines from available reports and records that a Kansas retail dealer has erroneously received money from the Kansas retail dealer incentive fund, the retail dealer shall refund to the secretary of revenue the amount erroneously paid, within 30 days after receiving notification by the secretary.

(b) Each Kansas retail dealer who has a dispute concerning an incentive payment shall request resolution from the secretary of revenue or the secretary's designee through the informal conference process. (Authorized by K.S.A. 2007 Supp. 79-34,174; implementing K.S.A. 2007 Supp. 79-3420 and 79-34,174; effective Feb. 13, 2009.)

Article 51.—TITLES AND REGISTRATION

92-51-21. Staggered registration system. (a) All motorized bicycles, motor vehicles, and recreational vehicles, other than apportioned registered vehicles, mobile homes, trailers, antique vehicles, trucks or truck tractors registered for a gross weight of greater than 12,000 pounds, and commercial motor vehicles as described in K.S.A. 8-143m and amendments thereto, shall be registered annually under a staggered registration system during one of 11 registration periods. The month of expiration of the registration shall be embossed upon the number plate issued at the time of registration or shall be represented by a decal attached to the number plate in a location designated by the director.

(b) At the time of registration, the owner shall pay a prorated registration fee equal to 1/12 of the annual registration fee multiplied by the number of months remaining in the registration period, including the month of expiration. Each registration period shall expire on the last day of the month as prescribed for the alpha letter designation on the plate or decal affixed to the plate, as determined by the first letter of the owner's surname in accordance with the following table:

ALPHABETICAL DESIGNATION FOR MONTHLY STAGGERED REGISTRATION

Alpha Letter Designation	Month	First Letter of Surname
A	February	A
B	March	B
C	April	C, D
E	May	E, F, G
H	June	H, I
J	July	J, K, L
M	August	M, N, O
R	September	P, Q, R
S	October	S
V	November	T, V, W
X	December	U, X, Y, Z

(Authorized by and implementing K.S.A. 2013

Supp. 8-134, K.S.A. 8-134a; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982; amended Jan. 3, 2003; amended Nov. 22, 2013.)

92-51-25a. Proof of valid license required for foreign vehicle dealers. (a) For purposes of this regulation, the following terms shall have the meanings specified in this subsection:

(1) "Foreign vehicle dealer" shall mean a person holding a license to sell vehicles at retail or wholesale issued by a jurisdiction outside of the territorial limits of the United States. For purposes of this regulation, all states, protectorates, and trust territories administered by the federal government of the United States shall be considered part of the United States and shall be excluded from the definition of "foreign vehicle dealer."

(2) "Agent of a foreign vehicle dealer" shall mean a person who is authorized by a foreign vehicle dealer to purchase vehicles for import and resale by the foreign vehicle dealer at the foreign vehicle dealer's authorized place of business in the foreign country.

(3) "Vehicle dealer" has the meaning specified in K.S.A. 8-2401, and amendments thereto.

(b) Before permitting a foreign vehicle dealer to purchase a vehicle, each vehicle dealer shall require proof that the foreign vehicle dealer holds a foreign dealer license and shall retain a copy of the dealer license from the foreign dealer's country of origin.

(c) Each vehicle dealer who sells a vehicle to a foreign vehicle dealer shall stamp in red ink on the back of the title in all unused dealer reassignment spaces the words "For Export Out of Country Only" and the vehicle dealer's state-assigned vehicle dealer number. The stamp shall also be placed on the front of the title in a manner that does not obscure any names, dates, or mileage statements. The stamp shall be at least two inches wide, and all words shall be clearly legible.

(d) If the purchaser is a foreign vehicle dealer, the vehicle dealer shall obtain the following documents before the sale and shall maintain these documents in the vehicle dealer's sales file for each vehicle:

(1) A copy of the foreign vehicle dealer's license issued by the appropriate governmental entity of the foreign government to the foreign vehicle dealer;

(2) a copy of any identification documentation issued by the appropriate foreign governmental entity indicating that the person claiming to be a foreign vehicle dealer is, in fact, a resident of the foreign country. These documents shall include a driver's license, passport, voter registration documents, or any official identification card if the card contains a picture of the person and lists a residential or business address;

(3) a completed "Kansas motor vehicle sales tax exemption certificate for vehicles taken out of the state" for each vehicle sold to the foreign vehicle dealer, indicating that the vehicle has been purchased for export;

(4) a copy of the front and back of the title to the vehicle, showing the "For Export Out of Country Only" stamp and the seller's assigned vehicle dealer number used by the auction or dealership; and

(5) for any agent of a foreign vehicle dealer, a copy of documentation supporting the person's claim to be acting as an agent for the foreign vehicle dealer. (Authorized by K.S.A. 8-2423; implementing K.S.A. 8-2402 and K.S.A. 8-2403; effective Sept. 10, 2010.)